

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus

Bankruptcy Judge

Modesto, California

July 24, 2000 at 9:00 a.m.

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1. 00-92102-A-7 STEVEN & MARILYN SADLER HEARING ON MOTION FOR
KEH #1 RELIEF FROM AUTOMATIC STAY
ASSOCIATES HOUSING FINANCE, LLC VS. PART II
6/26/00 [5]

Tentative Ruling: The motion is granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to repossess its collateral, to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim including any attorneys' fees awarded herein. No other relief is awarded. The subject property has a value of \$43,545 and is encumbered by a perfected security interest in favor of the movant. That security interest secures a claim of \$53,092.02. There is no equity and there is no evidence that the property is necessary to a reorganization or that the trustee can administer the subject property for the benefit of creditors. Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived.

2. 00-91806-A-7 MICHAEL & VICTORIA DONAHUE HEARING ON MOTION FOR
SB #1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO BANK, N.A. VS. PART II
06/28/00 [14]

Final Ruling: The movant or the objecting party has voluntarily dismissed the matter on calendar.

3. 97-95909-A-7 HONORATO & ANASTACIA CABE CONT. HEARING ON MOTION FOR
TJH #1 RELIEF FROM AUTOMATIC STAY
FIRST MORTGAGE CORPORATION VS. 5/8/00 [22]

Tentative Ruling: Because the motion does not comply with the requirements of LBR 4001-1, Part II, the motion is deemed brought under LBR 4001-1, Part III. The movant has waived the time limitations of section 362(e). If the debtor, the trustee, or any party in interest appears to oppose the motion, the court will assign a briefing schedule and a final hearing date and time. If there is no opposition, the court will consider the merits of the motion.

4. 00-92420-A-7 AMELIA KATHLEEN HOLLOWAY HEARING ON MOTION FOR
EGS #1 RELIEF FROM AUTOMATIC STAY
FIRST NATIONWIDE MORTGAGE PART II
CORPORATION VS. 7/14/00 [7]

Tentative Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part III. If the debtor, the trustee, or any other party in interest appears in opposition to the motion, the court will assign a briefing schedule and a final hearing date and time. If no one appears in opposition to the motion, the court will take up the merits of the motion.

5. 99-91527-A-7 CONRAD & FELISA ABAYON HEARING ON MOTION FOR
DMM #1 RELIEF FROM AUTOMATIC STAY
BANK OF THE WEST VS. PART II
7/3/00 [48]

Final Ruling: The movant or the objecting party has voluntarily dismissed the matter on calendar.

6. 00-91932-A-7 YOUSIF & MARIAM HAMZA HEARING ON MOTION FOR
CWN #1 RELIEF FROM AUTOMATIC STAY
CHASE MANHATTAN MORTGAGE PART II
CORPORATION VS. 7/10/00 [7]

Final Ruling: There is a service defect - the U.S. Trustee was served at an incorrect address. For all Modesto cases, the correct address is: Office of the U.S. Trustee, 1130 O Street, Rm. 1110, Fresno, CA 93721. Therefore, the court continues the hearing to August 14, 2000, at 9:00 a.m. No later than July 25, 2000, the movant or movant's counsel shall serve the U.S. Trustee and all other parties entitled to notice with notice of the continued hearing. All moving papers shall also be served on the U.S. Trustee.

7. 00-91736-A-7 JOSE R. FRANCO, SR. & HEARING ON MOTION FOR
CD #1 DEMETRIA FRANCO RELIEF FROM AUTOMATIC STAY
BENEFICIAL CALIFORNIA INC. VS. PART II
6/28/00 [11]

Final Ruling: There is a service defect - the U.S. Trustee was served at an incorrect address. For all Modesto cases, the correct address is: Office of the U.S. Trustee, 1130 O Street, Rm. 1110, Fresno, CA 93721. Therefore, the court continues the hearing to August 14, 2000, at 9:00 a.m. No later than July 25, 2000, the movant or movant's counsel shall serve the U.S. Trustee and all other parties entitled to notice with notice of the continued hearing. All moving papers shall also be served on the U.S. Trustee.

8. 00-91736-A-7 JOSE R. FRANCO, SR. & HEARING ON MOTION FOR
CD #2 DEMETRIA FRANCO RELIEF FROM AUTOMATIC STAY
BENEFICIAL CALIFORNIA INC. VS. PART II
6/28/00 [13]

Final Ruling: There is a service defect - the U.S. Trustee was served at an incorrect address. For all Modesto cases, the correct address is: Office of the U.S. Trustee, 1130 O Street, Rm. 1110, Fresno, CA 93721. Therefore, the

court continues the hearing to August 14, 2000, at 9:00 a.m. No later than July 25, 2000, the movant or movant's counsel shall serve the U.S. Trustee and all other parties entitled to notice with notice of the continued hearing. All moving papers shall also be served on the U.S. Trustee.

9. 00-91843-A-7 STEVE MULVIHILL HEARING ON MOTION FOR
SW #1 RELIEF FROM AUTOMATIC STAY
WFS FINANCIAL INC. VS. PART III
7/10/00 [8]

Tentative Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part III. If the debtor, the trustee, or any other party in interest appears in opposition to the motion, the court will assign a briefing schedule and a final hearing date and time. If no one appears in opposition to the motion, the court will take up the merits of the motion.

10. 00-92345-A-7 ROBERT WILLIAM LOWE HEARING ON MOTION FOR
CWN #1 RELIEF FROM AUTOMATIC STAY
FAIRBANKS CAPITAL CORPORATION VS. PART II
7/10/00 [5]

Final Ruling: There is a service defect - the U.S. Trustee was served at an incorrect address. For all Modesto cases, the correct address is: Office of the U.S. Trustee, 1130 O Street, Rm. 1110, Fresno, CA 93721. Therefore, the court continues the hearing to August 14, 2000, at 9:00 a.m. No later than July 25, 2000, the movant or movant's counsel shall serve the U.S. Trustee and all other parties entitled to notice with notice of the continued hearing. All moving papers shall also be served on the U.S. Trustee.

11. 00-91951-A-7 MICHAEL & CHRISTINE MAHER HEARING ON MOTION FOR
SW #1 RELIEF FROM AUTOMATIC STAY
WFS FINANCIAL INC. VS. PART II
7/10/00 [9]

Tentative Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part III. If the debtor, the trustee, or any other party in interest appears in opposition to the motion, the court will assign a briefing schedule and a final hearing date and time. If no one appears in opposition to the motion, the court will take up the merits of the motion.

12. 00-92051-A-7 RICKY & PATSY COBLE HEARING ON MOTION FOR
AJH #1 RELIEF FROM AUTOMATIC STAY ETC
COUNTRYWIDE HOME LOANS, INC. VS. PART II
6/30/00 [7]

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted in part pursuant to 11 U.S.C. § 362(d)(2) in order to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject real property

following the sale. All other relief is denied. The subject real property has a value of \$134,500 and is encumbered by a perfected deed of trust or mortgage in favor of the movant. That security interest secures a claim of \$83,355.80. After considering the junior lien securing \$54,434.72, there is no equity and there is no evidence that the subject real property is necessary to a reorganization or that the trustee can administer the subject real property for the benefit of creditors. Fees and costs of \$675 or, if less, the amount actually billed to the movant by counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees may be enforced against the movant's collateral. This award may not be enforced against the debtor. However, if the debtor wishes to cure the loan default, these fees must be paid. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

13. 99-92451-A-7 WESLEY L. ALLEN HEARING ON MOTION TO
AVOID LIEN
WESLEY L. ALLEN VS. 7/14/00 [14]

JAMES R. MORGAN

Tentative Ruling: None. Appearances are required.

14. 99-92451-A-7 WESLEY L. ALLEN HEARING ON MOTION TO
AVOID LIEN
WESLEY L. ALLEN VS. 7/14/00 [18]

MARTIN RODRIGUEZ

Tentative Ruling: None. Appearances are required.

15. 00-91568-A-7 CHARLES EDWARD VOGEL HEARING ON MOTION FOR
LJB #1 RELIEF FROM AUTOMATIC STAY ETC
PRINCIPAL RESIDENTIAL MORTGAGE, INC.VS. 6/29/00 [17]

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted in part pursuant to 11 U.S.C. § 362(d)(2) in order to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject real property following the sale. All other relief is denied. The subject real property has a value of \$138,000 and is encumbered by a perfected deed of trust or mortgage in favor of the movant. That security interest secures a claim of \$143,510.44. After considering all other liens and security interests, if any, there is no equity and there is no evidence that the subject real property is necessary to a reorganization or that the trustee can administer the subject real property for the benefit of creditors. Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

16. 00-91269-A-7 ANN M. CANNON HEARING ON MOTION FOR

CD #1
BENEFICIAL CALIFORNIA, INC. VS.

RELIEF FROM AUTOMATIC STAY
PART II
7/3/00 [21]

Final Ruling: There is a service defect - the U.S. Trustee was served at an incorrect address. For all Modesto cases, the correct address is: Office of the U.S. Trustee, 1130 O Street, Rm. 1110, Fresno, CA 93721. Therefore, the court continues the hearing to August 14, 2000, at 9:00 a.m. No later than July 25, 2000, the movant or movant's counsel shall serve the U.S. Trustee and all other parties entitled to notice with notice of the continued hearing. All moving papers shall also be served on the U.S. Trustee.

17. 00-92074-A-7 JAIME VENEGAS
EGS #1
SOURCE ONE MORTGAGE SERVICES
CORPORATION VS.

HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
PART III
7/13/00 [5]

Tentative Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part III. If the debtor, the trustee, or any other party in interest appears in opposition to the motion, the court will assign a briefing schedule and a final hearing date and time. If no one appears in opposition to the motion, the court will take up the merits of the motion.

18. 96-91478-A-7 ROBERTO & AIDA DAVID
FW #2
ROBERT & AIDA DAVIS VS.

HEARING ON MOTION TO
AVOID LIEN ON DEBTOR'S
RESIDENCE
6/19/00 [12]

MATHEW & BARBARA BRUNO

Tentative Ruling: The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of \$238,000 as of the date of the petition. The unavoidable liens total \$184,327.89. The debtor has an available exemption of \$75,000. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided.

19. 00-92090-A-7 BRUCE & PEGGY GIOVANNI
SAH #1
BRUCE & PEGGY GIOVANNI VS.

HEARING ON MOTION TO
AVOID LIEN PURSUANT TO
U.S.C. SECTION 522
7/3/00 [5]

INTERNAL REVENUE SERVICE

Tentative Ruling: The motion is denied. To avoid a lien pursuant to 11 U.S.C. § 524(f)(1)(A), the lien must be a judicial lien. A judicial lien is a "lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding." 11 U.S.C. § 101(36). There is no evidence that the federal tax lien in this case is a judicial lien. It was the debtor's burden to establish that the lien is a judicial lien. More than likely, it is a statutory lien. 11 U.S.C. § 101(53). It is well established that federal tax liens are not judicial liens but are statutory liens. See e.g., Rench v. United States Internal Revenue Service (In re Rench), 129 B.R. 649 (Bankr. D. Kan. 1991); Matter of Driscoll, 57 B.R. 322 (Bankr. S.D. Ohio 1988).

Further, the premise of the motion is that the taxes secured by the tax lien were discharged in bankruptcy and, therefore, the tax lien securing them is no longer enforceable. The discharge of a debt does not mean the lien securing the debt is avoidable. See e.g., Matter of Tarnow, 749 F.2d 464, 465 (7th Cir. 1984). Even though a debtor's personal liability is discharged, the debtor's property remains subject to the lien. This is clear from 11 U.S.C. § 524 which describes the effect of a discharge. Nowhere in section 524 is a creditor secured by a pre-petition lien on the debtor's pre-petition property precluded from enforcing the lien against that property. Were the result different, a discharged debtor would be able to avoid deeds of trust and mortgages - something that cannot be done.

Finally, the motion was not served at all addresses required by Local Bankruptcy Rule 2002(c).

20. 00-92290-A-7 DENNIS & DEBRA WILSON
AC #1
CONTIMORTGAGE CORPORATION VS.

HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
PART II
6/28/00 [5]

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted in part pursuant to 11 U.S.C. § 362(d)(2) in order to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject real property following the sale. All other relief is denied. The subject real property has a value of \$124,000 and is encumbered by a perfected deed of trust or mortgage in favor of the movant. That security interest secures a claim of \$126,814.70. After considering all other liens and security interests, if any, there is no equity and there is no evidence that the subject real property is necessary to a reorganization or that the trustee can administer the subject real property for the benefit of creditors. Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run

concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

21. 00-91992-A-7 RAMIRO & SARAI AZA
OHP #1
COUNTRYWIDE HOME LOANS, INC. VS.

HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY ETC
PART II
6/26/00 [6]

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted in part pursuant to 11 U.S.C. § 362(d)(2) in order to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject real property following the sale. All other relief is denied. The subject real property has a value of \$47,000 and is encumbered by a perfected deed of trust or mortgage in favor of the movant. That security interest secures a claim of \$56,714.63. After considering all other liens and security interests, if any, there is no equity and there is no evidence that the subject real property is necessary to a reorganization or that the trustee can administer the subject real property for the benefit of creditors. Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

22. 00-92092-A-7 MICHAEL WORKMAN
LJB #1
WELLS FARGO HOME MORTGAGE, INC. VS.

HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY ETC
PART II
6/29/00 [6]

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted in part pursuant to 11 U.S.C. § 362(d)(2) in order to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject real property following the sale. All other relief is denied. The subject real property has a value of \$155,000 and is encumbered by a perfected deed of trust or mortgage in favor of the movant. That security interest secures a claim of \$144,285.29. After considering the junior lien of \$40,000, there is no equity and there is no evidence that the subject real property is necessary to a reorganization or that the trustee can administer the subject real property for the benefit of creditors. Fees and costs of \$660 or, if less, the amount actually billed to the movant by counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees may be enforced against the movant's collateral. This award may not be enforced against the debtor. However, if the debtor wishes to cure the loan default, these fees must be paid. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

23. 97-95592-A-7 FRANK & SHERRY BANUELOS

HEARING ON MOTION FOR

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted in part pursuant to 11 U.S.C. § 362(d)(2) in order to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject real property following the sale. All other relief is denied. The subject real property has a value of \$115,000 and is encumbered by a perfected deed of trust or mortgage in favor of the movant. That security interest secures a claim of \$120,150.26. After considering all other liens and security interests, if any, there is no equity and there is no evidence that the subject real property is necessary to a reorganization or that the trustee can administer the subject real property for the benefit of creditors. Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

24. 00-91798-A-7 AIMEE SHAW
SW #1
WFS FINANCIAL INC. VS.

HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
PART II
6/29/00 [10]

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to repossess its collateral, to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim including any attorneys' fees awarded herein. No other relief is awarded. The subject property has a value of \$3,850 and is encumbered by a perfected security interest in favor of the movant. That security interest secures a claim of \$8,048.23. There is no equity and there is no evidence that the property is necessary to a reorganization or that the trustee can administer the subject property for the benefit of creditors. Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).